

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL PARTIDA, ) No. C 08-03751 CW (PR)  
Petitioner, ) ORDER DENYING MOTIONS TO VACATE  
v. ) AND TO STAY PROCEEDINGS  
BEN CURRY, Warden, )  
Respondent. )  
\_\_\_\_\_ )

## INTRODUCTION

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a pro se state prisoner. The habeas petition was denied, and judgment entered in favor of Respondent on February 14, 2011. Petitioner now moves to vacate the judgment, and to stay proceedings (Docket No. 15). For the reasons set forth below, the motions are DENIED.

## DISCUSSION

The petition challenged a decision by the Board of Prison Terms to deny Petitioner parole. The Court denied the petition on grounds that a recent United States Supreme Court decision, Swarthout v. Cooke, 131 S. Ct. 859 (2011), foreclosed the granting of relief.

In his motion to vacate, Petitioner raises two objections to this Court's decision, neither of which are availing. First, Petitioner asserts that the precedential value of Cooke is

1 diminished because it was decided without benefit of briefing or  
2 oral argument. Not only has Petitioner failed to cite any  
3 persuasive authority to support this assertion, he is under a  
4 misapprehension, as the case was briefed.

5 Second, he contends that Cooke does not control, but an  
6 appellate court decision, Hayward v. Marshall, 603 F.3d 546 (9th  
7 Cir. 2010), does. Petitioner's contention is unavailing because  
8 this Court is "compelled to obey the decisions of our nation's  
9 highest court." See MacDonald v. Kahikolu Ltd., 442 F.3d 1199,  
10 1202 (9th Cir. 2006) (citing Hart v. Massanari, 266 F.3d 1155,  
11 1171 (9th Cir. 2001)). This Court is bound by Cooke, which  
12 clearly forecloses relief on the claims raised in the petition.  
13 Accordingly, Petitioner's motion to vacate the judgment is DENIED.

14 Petitioner moves to stay the proceedings until the Supreme  
15 Court rules on Pirtle v. California Board of Prison Terms, 611  
16 F.3d 1015 (9th Cir. 2010), and until the time for filing a  
17 petition for a rehearing on Cooke has expired. The motion is  
18 DENIED as moot because the Supreme Court has issued a ruling on  
19 Pirtle, see Cate v. Pirtle, No. 10-868, 2011 WL 2297791 (June 13,  
20 2001), and the petition for a rehearing on Cooke was denied.

21 The Clerk shall terminate Docket No. 15.

22 IT IS SO ORDERED.

23 DATED: 9/7/2011

24 

25 CLAUDIA WILKEN

26 United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL PARTIDA, ) No. C 08-03751 CW (PR)  
Petitioner, )  
v. ) CERTIFICATE OF SERVICE  
BEN CURRY, Warden, )  
Respondent. )

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 7, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Daniel Partida H-48181  
CTF-North  
P.O. Box 705  
Soledad, CA 93960-0705

Dated: September 7, 2011

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk